IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

AS.No. 127 of 1995(D)

OS.156/1991 of SUB COURT, OTTAPPALAM
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APPELLANTS/DEFENDDANTS:
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1. UNITED INDIA INSURANCE CO. LTD.
REGISTERED OFFICE AND HEAD OFFICE
24 WHITES ROAD, MADRAS 600 014
REPRESENTED BY ITS CHAIRMAN

2. THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO. LTD.
BRANCH OFFICE, MANNARKKAD

BY ADV. SRI.P.V.JYOTHI PRASAD
SRI.SEBASTIAN DAVIS

RESPONDENT/PLAINTIFF:

DENNY PAUL, AGED 24 YEARS, S/O.PAUL VARGHESE,,
ARANCHERIL HOUSE, KAKKOOR, THIRUMARADY,
MOOVATTUPUZHA, ERNAKULAM REPRESENTED
BY HER POWER OF ATTORNEY HOLDER BABY PAUL,
S/O.PAUL VARGHESE, AGED 35 YEARS,
KIZHAKKEMADAPPILLIL HOUSE, KAKKOOR
THIRUMARADY, MOOVATTUPUZHA, ERNAKULAM.

BY ADV. SRI.RAJU ABRAHAM PULPARA

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 13/02/2007, ALONG WITH AS NO. 128 OF 1995 AS NO.138 OF 1995
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: IN THE

ORDER ON C.M.P.NO.1040/1995 IN A.S.NO.127/1995

DISMISSED

13-2-2007 SD/- KURIAN JOSEPH, JUDGE.

SD/- K.T.SANKARAN, JUDGE.

/ TRUE COPY /

KURIAN JOSEPH & K.T.SANKARAN,JJ.

A.S.Nos. 127, 128 & 138 of 1995

Dated this the 13th day of February, 2007

JUDGMENT

Sankaran,J.

These appeals are filed by the defendants in O.S.Nos.155/1991, 156/1991 and 157/1991 on the file of the Court of the Subordinate Judge of Ottappalam. The court below decreed the suits in part.

2. The suits were filed by the respective plaintiffs as indigent persons. The plaintiffs in the suits owned properties which were planted with rubber. It is stated that the plantation work was commenced in 1982 after taking loans from banks and the Rubber Board. The rubber trees were insured with the defendants for a sum of Rs.1,26,824/- in respect of the property in O.S.No.155/1991, Rs.1,26,460/- in respect of the property in O.S.No.156/1991 and Rs.1,29,978/- in respect of the property in O.S.No.157/1991. The required premium was also paid by the plaintiffs. The period of the policy was from 1-3-1989 to 28-2-1990. On 9-3-1989 the rubber trees were destroyed by forest fire. The plaintiffs informed the insurer on

11-3-1989 about the loss sustained due to forest fire. Claims were made by the plaintiffs. On 22-3-1989 a Surveyor was deputed by the insurer to assess the loss. The Surveyor prepared Exts.B5 to B7 reports indicating the number of trees destroyed, the age of trees and the loss. In spite of several letters having been sent by the plaintiffs, no reply was sent by the defendants. The suits were filed in this background claiming a sum of Rs.1,04,248/- in O.S.No.155/1991, Rs.99,600/- in O.S.No.156/1991 and Rs.91,300/- in O.S.No.157/1991.

3. The defendants contested the suit. The main contention raised by the defendants is that the suit is not maintainable in view of the arbitration clause in the policy. It was contended that the age of the trees shown in the proposal was not correct and the correct age of the trees was mentioned in the survey report. It was contended that the insured had violated the policy conditions by furnishing false information. The defendants having not repudiated the claim of the plaintiffs, there was no cause of action for the plaintiffs to file the suits and the court had no jurisdiction to entertain the suits as the plaintiffs

had not taken any efforts to invoke condition No.19 in the policy. The compensation claimed was high and excessive and it was made without any sufficient scientific basis and data. The damages could be assessed only on the basis of the plantation cost of trees in the age group of 1 to 3 years alone as per the report of the Rubber Board.

4. Before the trial court, Exts.A1 to A27 and B1 to B7 were marked and P.W1 and D.W.1 were examined. A contention was taken before the trial court at the time of arguments that the insurance company had no liability to pay any damages to the insured if the damage occurred within 15 days of the commencement of the policy. Such a contention was not raised in the written statement. The court below held that the policy does not contain such a condition. The parties are governed by the terms of the policy. The court below rightly rejected these contentions put forward by the defendants.

5. As regards the dispute regarding the age of trees, the plaintiffs limited their claim in respect of trees aged 7 years and based on the amount shown in the proposal at Rs.166/- per tree, damages were

claimed. The trial court held that even if there was any mis-description of rubber plants in the proposal, since the plaintiffs were claiming damages only in respect of rubber trees aged 7 years, the plaintiffs could not be non-suited on that ground.

6. As regards the contention raised by the defendants that condition No.19 in the policy would bar the suit and that the remedy of the plaintiffs was only to resort to arbitration was negatived by the court below on an interpretation of condition No.19 of the policy. Condition No.19 of the policy reads thus:-

> "If any difference shall arise as to the quantum to be paid under this policy, (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of an arbitrator."

This clause would clearly indicate that it would have application only in a case where there is dispute regarding quantum to be paid under the policy. The defendants dispute even the liability. In such a case condition No.19 would have no application at all. The evidence of DW1 would clearly indicate that even at the time of giving evidence,

the insurer was not accepting the liability. Therefore, it is clear, as rightly held by the court below, that condition No.19 of the policy cannot be applied to the case. Moreover, clause 19 further states thus:-

> "It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the company has disputed or not accepted liability under or in respect of this policy."

The evidence clearly shows that the insurer has not accepted the liability. There is no pleading to that effect and therefore going by clause 19 of the policy itself, the dispute cannot be referred to arbitration.

7. A contention is raised, relying on clause 20 of the Policy, that the claim should be preferred within a period of 12 months. Learned counsel for the appellant contended that the suit was not filed within a period of 12 months and therefore it is barred by limitation. He relied on the decision reported in National Insurance Co.Ltd. v. Sujir Ganesh Nayak, 1997 (2) KLT 54 (SC) in support of this contention. Learned counsel for the respondents on the other hand contended that the decision has no application at all since the suit was filed before the

expiry of the period of 12 months. The suits were originally filed as indigent persons as O.P.Nos.18, 19 and 20 of 1990. It is submitted that the application for permission to file the suit as indigent persons were filed on 8-3-1990 within a period of one year from the date of the fire accident. The trial court did not permit the plaintiffs to file the suit as indigent persons and by the order dated 31st May 1991 the applications filed by them for permission to sue as indigent persons were dismissed. When an application to sue as an indigent person is dismissed and subsequently the court fee is paid by the plaintiff, the suit shall be deemed to have been filed on the date on which the application for permission to sue as an indigent person was filed, in view of Section 13 of the Limitation Act. The applications having been filed within a period of one year, the contention raised by the defendants that the suit is barred by limitation is without any substance.

8. The court below has granted decree to the plaintiffs quantifying the damages on the basis of value of the rubber tree at Rs.166/- per tree only in so far as the claim relates to trees aged 7

years. The method of calculation of damages adopted by the court below is just, reasonable and legal. The amount awarded to the plaintiffs is also just and reasonable. It is to be noted that though Exts.B5 to B7 survey reports would indicate that the plaintiffs would be entitled to get compensation in respect of trees aged less than 7 years, the court below has not granted compensation in respect of such trees. No grounds are made out for interference. The appeals lack merit and accordingly the appeals are dismissed. No order as to costs.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.

KURIAN JOSEPH &
K.T.SANKARAN, JJ.

JUDGMENT

13th February, 2007